IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.569 OF 2017
IN
COMPANY PETITION NO.18 OF 1998

M/s.Rushabh Precision Bearings Ltd.)….Applicant/
Org. Respondent

IN THE MATTER BETWEEN :

Gill and Co. Ltd.)....Org. Petitioner
V/s.
Official Liquidator of Rushabh Precision)
Bearings Ltd.)....Respondent

WITH

COMPANY APPLICATION NO.568 OF 2017
IN
COMPANY PETITION NO.18 OF 1998

Rusabh Precision Bearings Ltd.)
Through Krishna Tamaliya)....Applicant/
Org.Respondent

IN THE MATTER BETWEEN :

Gill and Co. Ltd.)....Org.Petitioner
Vs
Official Liquidator of Rushabh Precision)
Bearings Ltd.)....Respondent

Mr.Sharan Jagtiani a/w Mr.Faran Khan and Mutahhar Khan i/by Ganesh K.Gole for the applicants.
Ms.Rujuta Dhaygude i/by Anjana Sharma for Mill Mazdoor Sabha (Intervener).
[Mr.Pola Raghunath, Deputy Official Liquidator present].

CORAM : K.R.SHRIRAM,J
DATE : 5.2.2018

P.C.:-

COMPANY APPLICATION NO.569 OF 2017

1 At the outset, Mr.Jagtiani for applicant seeks leave to amend prayer clause-(a). Leave granted. Amendment to be carried out forthwith. Re-verification dispensed with.

2 This application is filed seeking to recall the order of winding up passed on 30.3.2010 in Company Petition No.18 of 1998 winding up Rushabh Precision Bearings Ltd (the company) and to discharge the Official Liquidator.

3 The original petitioner had filed a petition for recovery of a sum of Rs.10,00,000/-. Sometime in September-1998 consent terms were entered into and due to default committed by the company in liquidation, petition came to be admitted and advertised. In the meanwhile, the company had filed a reference before the Board for Industrial and Financial Reconstruction (BIFR) under Section 25 of the Sick Industrial Companies (Special Provisions) Act, 1975 (SICA). By virtue of section 22 of SICA, all proceedings got stayed. While the BIFR proceedings were pending, the company was ordered to be

wound up and when pendency of BIFR proceedings was brought to the notice of the Company Court, the order of winding up was recalled. BIFR rejected the reference and appeal was filed before AAIFR. The appeal also came to be dismissed. On 30.3.2010 this court was pleased to allow the petition and finally ordered winding up of the company and the Official Liquidator was directed to act in accordance with the said order of winding up.

4 The affidavit in support of this application was originally filed by one Krishna Tamaliya, Chief Executive Officer (CEO), Legal of the company which is in liquidation. One Mr.Rajesh Dhirajlal Vora who was the Managing Director of the company in liquidation has filed subsequent affidavits and a further affidavit confirming the affidavit in support.

5 The said Rajesh Dhirajlal Vora and his family members had given personal undertaking to various creditors and those creditors filed insolvency proceedings against Mr.Rajesh Dhirajlal Vora. Mr.Rajesh Dhirajlal Vora raised funds from his well-wishers and deposited sum of Rs.1 crore with the Official Assignee. The residence of Mr.Rajesh Dhirajlal Vora at Cuffe Parade, Mumbai was sold pursuant to orders passed by this court. The sale proceeds together

with the amounts from the well-wishers and other securities which Mr.Rajesh Dhirajlal Vora had, totalled to about Rs.29 crores and all the creditors have been paid off. By an order dated 4.5.2017, this court was pleased to annul the insolvency proceedings against Mr.Rajesh Dhirajlal Vora. Paragraphs-1 & 2 of the said order read as under :-

> *"1. Pursuant to the order dated 10th March 2017, the Insolvent Mr.Rajesh Vora has deposited a sum of Rs.1 crore with the Official Assignee. The said amount of Rs.1 Crore together with all other amounts lying with the Official Assignee was agreed by the creditors to be distributed inter-se towards full and final settlement of their claim.*
>
> *2. In view of the aforesaid, Mr.Rajesh Vora having complied with all his obligations in terms of the order dated 10th March 2017, this Court hereby annuls the insolvency proceedings against Mr.Rajesh Vora. The requirement of filing a notice of annulment under section 21(1) is hereby waived."*

6 The Official Liquidator in response to the application has filed an affidavit dated 14.8.2015 in which the Official Liquidator has submitted that the applicant should deposit sum of Rs.24,97,19,486/- with the Official Liquidator and also give an undertaking to settle the claim which will be received by the Official Liquidator within six months from the date of recall of winding up order and to add certain parties mentioned in prayer clause-(c) of the affidavit as respondents

to this proceeding.

7 In paragraph-12 the Official Liquidator has given a break up of the amount of Rs.24,97,19,486/-. It will be useful to reproduce paragraph-12 and the same reads as under :-

Sr.No	**Particulars**	**Amount in(Rs.)**
A	Suo moto claims of 309 workers (as stated in para 6 above)	16,01,55,443
B	Outstanding dues of Mills Mazdoor Sabha and other 5 persons (As stated in para 7 above)	4,94,94,600
C	Employees Provident Fund Organization (As stated in para 9 above)	17,89,100
D	Gujarat Electricity Board, Surendra Nagar (with running interest @ 12% p.a.) (As stated in para 10)	4,64,343
E	Statutory Liabilities (As stated in para 11)	1,41,16,000
F	Other Creditors (As stated in para 11)	2,37,00,000
	TOTAL	**24,97,19,486**

I shall now deal with each of these six heads :-

<u>(A) Suo moto claims of 309 workers – Rs.16,01,55,443/</u>-

(i) As far as this head of claim is concerned, in paragraph-6 of his affidavit, the Official Liquidator states as under :-

> *"That the pursuant to the advertisement the Official Liquidator has not received any claims from the workers/creditors. However, the Official Liquidator had*

> *received 309 claims (suo-moto) amounting to Rs.16,01,55,443/-."*

(ii) On the one hand, Official Liquidator states that he has not received any claims from the workers/creditors and on the other hand, he says he has received 309 claims (suo moto) amounting to Rs.16,01,55,443/-. I fail to understand what this `suo moto' means when he has received 309 claims and in the first sentence of paragraph-6 he states he has not received any claims pursuant to advertisement. In any event, the basis of this claim of 309 workers Rs.16,01,55,443/- is not given anywhere in the affidavit. Even 309 workers have not come forward to explain how this figure of Rs.16,01,55,443/- has been arrived at by the Official Liquidator.

(iii) Ms.Rujuta Dhaygude for Mill Mazdoor Sabha tenders an affidavit of one Ashokbhai affirmed on 27.7.2017 but did not make any submissions stating that she did not know what the matter was about and after hearing applicant's counsel for about 45 minutes when Ms.Dhaygude was asked to make her submissions, she stated that her senior is unwell and therefore, she cannot proceed further in the matter.

(iv) In any event as stated earlier, this affidavit does not indicate anything as to how the Official Liquidator has arrived at the figure of Rs.16,01,55,443/-. In view thereof, this head of claim can not come in the way of reliefs sought in this application.

(B) Outstanding dues of Mills Mazdoor Sabha and other 5 persons-Rs.4,94,94,600/-

(i) For this head of claim, in paragraph-7, Official Liquidator has proceeded on the basis of order of distraint dated 30.12.2004 issued by Mamlatdar Wadhwan, Circle officer, Revenue, Wadhwan and as the Recovery Officer Wadhwan visited the premises of company in liquidation for recovery of an outstanding amount of Rs.4,94,94,600/- due towards Mill Mazdoor Sabha and 5 other persons.

(ii) The Industrial Tribunal, Rajkot had passed an ex-parte order dated 15.3.2003 in a recovery application and consequently recovery certificate dated 7.4.2003 was issued by Labour Court in the sum of Rs.4,93,26,260/-. Against the said order the company in liquidation had filed a Writ Petition under Article 226 & 227 of the Constitution of India. After hearing the parties, the Writ court was pleased to set aside the order passed by the Labour court and the recovery certificate issued by the Labour court and observed as under :-

> *"The above referred charter of demands dated 17th January, 2001 made by the Union was addressed to the Managing Director, Rushabh Precision Bearings Limited*

> *i.e., the petitioner-company. The said demand does refer to the firms viz. M/s.SRS Bearing Industries and SRS Engineering Industries. On behalf of around 350 workmen employed by the said three industries, a demand was made against the petitioner company alone. The said demand notice was not addressed to either M/s.SRS Bearing Industries or to SRS Engineering Industries. It is evident that the appropriate Government made reference in respect of all the 350 workmen against the company alone i.e., the appropriate Government proceeded on the premise that the company and the firms had functional integrity and all the 350 workmen had a claim against the company. The Reference proceeded against the company alone. Though no specific reference was made and though the firms were not party before the Tribunal, the Tribunal has recorded specific finding that all the three industries had a functional integrity and that all the 350 workmen, though admittedly were not the employees of the company, had a claim against the company. The approach of the Tribunal below is manifestly wrong. I am of the opinion that in absence of a specific reference-whether or not the three industries had a functional integrity and whether the employees of the firms had a claim against the petitioner-company and in absence of the firms before it, the Tribunal could not have recorded the objectionable finding. The Tribunal has indeed exceeded its jurisdiction."*

(iii) Against this order the Mill Mazdoor Sabha preferred an appeal which appeal came to be dismissed by an order dated 18.6.2007. The appeal court dismissed the appeal not only by observing that it was not maintainable but also on merits. Paragraph-29 of the order of the appeal court reads as under :-

> *"In the above view of the matter, the present Appeal is liable to be dismissed on both these grounds of non-maintainability as well as on merits and it is accordingly*

dismissed without any order as to costs."

(iv) Mill Mazdoor Sabha preferred a Special Leave Petition which came to be dismissed by an order dated 17.8.2007. The Apex Court while setting aside the order of the Industrial Tribunal and Recovery Certificate issued by Labour Court, was pleased to remand the claim for de-novo adjudication. The reference is still pending before the Industrial Tribunal though the Apex Court was pleased to direct that it should be decided preferably within six months from 17.8.2007.

While setting aside the order of the Industrial Court, learned single Judge was pleased to direct the sum of Rs.20 lakhs that company had deposited, together with accumulated interest, be and has been transferred to the Industrial Tribunal.

(v) Therefore, as on date, the claim of the Mill Mazdoor Sabha is secured but yet to be adjudicated. The single Judge while setting aside the order of the Industrial Tribunal was pleased to observe, as could be seen from the quotation above in para-13, that all the 350 workers on whose behalf the Sabha has filed the claim were not employed by the company in liquidation and some of them were employed by SRS Bearing Industries or SRS Engineering Industries, the sister entities of the company in liquidation. Learned single

Judge has been pleased to observe that Tribunal has recorded a specific finding that all the 3 industries had a functional integrity and that all the 350 workmen, though admittedly were not the employees of the company, had a claim against the company. The approach of the Tribunal has been observed as manifestly wrong. Therefore as the claim of the Mill Mazdoor Sabha is yet to be decided by the Industrial Tribunal, in view of the observation made by single Judge and subsequent dismissal of the appeal by the Division Bench and the Apex court, the claim of the workmen is still speculative and that cannot come in the way of the application for recall of the order of winding up. In any event, the claim of the Mill Mazdoor Sabha has been secured by deposit of Rs.20,00,000/- plus accumulated interest as per the order passed by the Gujarat High Court. Moreover, if company is revived and ultimately the workmen succeed and it is found that the amount of Rs.20,00,000/- plus accumulated interest was not sufficient to pay off their claim, still the workmen can execute the order against the company.

(C) Employees Provident Fund Organization-Rs.17,89,100/-

(i) So far as Employees Provident Fund Organization- claim of Rs.17,89,100/- is concerned, the company has placed on record a letter addressed by the company to the Provident Fund Commissioner paying a sum of Rs.13,65,679/-. Mr.Jagtiani also tenders copy of another letter dated 17.5.2017 from Employees Provident Fund Organization (EPFO) stating that after crediting an amount of Rs.13,65,679/- an amount of Rs.1,17,352/- was still outstanding. Mr.Jagtiani also placed on record photo copy of demand draft dated 6.9.2017 issued by ICICI Bank for Rs.1,17,352/- in favour of The Employees Provident Fund A/c RUSHABH PRECISION BEARINGS LIMITED. In my view, this amount will take care of the claim of the employees provident fund organization.

(D) Gujarat Electricity Board, Surendra Nagar (with running interest @ 12% p.a.) - Rs.4,64,343/-

(i) For this claim of Gujarat Electricity Board of Rs.4,64,343/-, the applicant undertakes to pay the amount of Rs.4.64,343/- to Gujarat Electricity Board within 2 weeks from today. Undertaking accepted.

(E) Statutory Liabilities- Rs.1,41,16,000/-

(i) The break up for this Statutory Liabilities of Rs.1,41,16,000/-, could be found in paragraph-11 of the affidavit of the Official Liquidator which reads as under :-

Sr.No.	Particulars	Amount in Rs. (In Lacs)
1	P.F.Arrears as on 31.03.2000	9.57
2	ESIC Dues	4.97
3	Sales Tax Dues	11.51
4	Electricity Dues	4.82
5	GIDC dues	0.2
6	Professional Tax	0.32
7	Outstanding Telephone dues	0.18
8	Income Tax Dues	109.59
	TOTAL	**141.16**

(ii) Item-1- PF arrears, as stated earlier has already been paid. Items 2 to 7, Mr.Jagtiani states that the applicant will pay the amount within two weeks from today. Undertaking accepted.

(iii) So far as item-8, viz, Income-tax Dues of Rs.109.59 lakhs is concerned, the same is subject matter of appeal filed by the applicant which is pending before the CIT (Appeals). That claim is subjudice. In any event, if ultimately income-tax authorities succeed, that can be recovered from the company. Therefore, the pendency of this claim of income-tax authorities cannot come in the way of revival of the company.

(F) Other Creditors- Rs.2,37,00,000/-

(i) So far as this item, there is no break up given by the liquidator. He simply states in paragraph-11 "Further this office has received other creditors claim for an amount of Rs.2,37,00,000/-". This is contrary to what he has stated in paragraph-6 where the Official Liquidator states "that pursuant to the advertisement, the Official Liquidator has not received any claims from the workers/creditors." There is no break up also given for Rs.2,37,00,000/-.

(ii) Mr.Jagtiani states that perhaps the Official Liquidator has relied upon the reference filed by the company before BIFR in 1998-99. Almost 20 years have passed since then and none of the creditors have approached the Official Liquidator, otherwise liquidator would have the details with him. Moreover, Official Liquidator has stated that even after the advertisement, he has not received any claims from creditors. In any event, even for the sake of argument, if these creditors approach the Official Liquidator, their claims might be barred by limitation.

I agree with Mr.Jagtiani.

8 In the circumstances, the application is allowed in terms of prayer clauses-(a) and (b) which read as under :-

> *"(a) that this Hon'ble Court be pleased to recall order dated 30th March 2010 passed in Company Petition No.18 of 1998 and vacate the same ;*

> *"(b) that this Hon'ble Court be pleased to discharge the Official Liquidator, High Court, Bombay appointed pursuant to order dated 30th March 2010 passed in Company Petition No.18 of 1998."*

9 Undertaking of Shri Rajesh Dhirajlal Vora for himself and on behalf of the company to file an indemnity bond and an undertaking with the Official Liquidator not to dispose of any of the fixed assets of the company including lease hold properties for a period of six months without obtaining prior leave of the court, is accepted. This indemnity/undertaking to be filed within two weeks from today.

10 Applicant to pay a sum of Rs.2,00,000 to office of Official Liquidator as costs.

Application disposed.

<u>COMPANY APPLICATION NO.568 OF 2017</u>

1 In view of the order passed in Company Application No.569 of 2017, this application does not survive and stands disposed accordingly.

(K.R.SHRIRAM,J)

KJ